

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

DAR. NO. _____

APPEALS COURT NO. 2018-P-0492

SUSAN CIANI,
PETITIONER,

v.

BRENDA MACGRATH, CLAY H. CIANI; JOHN J. CIANI and
WILLIAM R. CIANI,
RESPONDENTS,

ON RESERVATION AND REPORT OF THE
DENIAL OF CROSS-MOTIONS FOR SUMMARY JUDGMENT
FROM THE WORCESTER PROBATE AND FAMILY COURT

BRENDA MACGRATH'S APPLICATION FOR
DIRECT APPELLATE REVIEW

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DATED: April 23, 2018

I. Request for Direct Appellate Review

Brenda MacGrath ("Personal Representative") requests that this Court grant direct appellate review of the Trial Court's denial of Personal Representative's Motion for Partial Summary Judgment and its Reservation and Report regarding the administration of the spousal elective share pursuant to G.L. c. 191, §15. There are no cases that address how, within the context of G.L. c. 191, Section 15, such forced spousal share should be determined and administered. Specifically, the appeal raises several questions of first impression and novel questions of law regarding the spousal elective share which should be submitted for final determination to the Supreme Judicial Court.

II. Statement of Prior Proceedings

On June 3, 2015, Brenda MacGrath ("Brenda" or "Personal Representative") petitioned for the informal probate of Raymond Ciani's ("Decedent") Will and she was appointed as Personal Representative of the Estate on or about the same date (docket number WO15P1760EA). On July 3, 2015, Susan Ciani ("Susan") filed a Waiver

of Will, claiming an elective share pursuant to G.L. c. 191, § 15.

On or about March 2, 2016, Susan filed three separate Petitions to Partition to force the sale of three of Decedent's parcels of real estate (dockets 16E0019, 16E0020 and 16E0021).

Brenda MacGrath filed Answers to the three Petitions to Partition individually, and in her capacity as Personal Representative of the Estate filed Counterclaims to the Petitions to Partition, seeking among other things a Declaratory Judgment with respect to the application of G.L. c. 191 § 15.

On January 27, 2017, Personal Representative filed a Motion for Partial Summary Judgment on her Counterclaim for Declaratory Judgment.¹ On the same date, Susan filed a Cross-Motion for Summary Judgment.

¹The Children's counterclaims for waste and ouster in Docket number WO16E0020PP are not the subject of the Cross-Motions for Summary Judgment and remain contested. Further, the Personal Representative's Counterclaim relating to Recovery of Decedent's Assets in Docket number WO16E0020PP remains contested.

On or about February 7, 2018, the three Petitions for Partition were consolidated for the purposes of reservation and report to the Appeals Court.

On March 20, 2018, the trial court (Sandman, J.) denied the Personal Representative's Motion for Partial Summary Judgment and Susan's Cross-Motion for Summary Judgment. The court found there were no material facts in dispute, no case law exists regarding the application of G.L. c. 191, § 15 and as such, the Court could not determine whether either party was entitled to judgment as a matter of law. After denial of the motions, the trial court Reserved and Reported the questions of law raised by the Motion for Partial Summary Judgment and the Cross-Motion.

Susan entered her the appeal and Personal Representative entered her cross-appeal in the Appeals Court.

III. Statement of Facts

Raymond J. Ciani ("Decedent") drafted a Will on June 2, 2000 ("Will"), leaving his entire estate to his wife Mary Ciani ("Mary"), or if she did not

survive him, in equal shares to their four adult Children. Mary predeceased the Decedent.

On August 25, 2013, the Decedent married Susan Ciani ("Susan"). Decedent did not alter the provisions of his will after this marriage to make any provisions for his new wife. On April 13, 2015, Decedent died while residing at 29 Lincoln Point Road, Charlton, Worcester County, Massachusetts. Decedent was survived by his four children; Clay H. Ciani, John J. Ciani, William R. Ciani and Brenda MacGrath (Decedent's children shall collectively be referred to as the "Children"), all of whom were from his first marriage to Mary; and, his second spouse of less than two years, Susan.

On June 3, 2015, the Personal Representative petitioned for the informal probate of Decedent's Will and she was appointed as Personal Representative of Decedent's estate. All of the Children and Susan assented to the allowance of the Will and the appointment of Personal Representative.

On July 3, 2015, Susan filed a claim for a forced spousal share in connection with Decedent's Estate,

pursuant to G.L. c. 191, § 15. This represents her sole interest in Decedent's estate.

Decedent owned five separately taxed parcels of real estate at his death: 1) 29 Lincoln Point Road, Charlton, Massachusetts ("Lincoln Point Property"); 2) 88 Ramshorn Road, Charlton, Massachusetts; 3) Lot 81-B-25.1 in Charlton, Massachusetts ("Lot 25.1"); 4) Lot 81-B-25.6 in Charlton, Massachusetts ("Lot 25.6"); and 5) Lot 81-B-26 in Charlton, Massachusetts ("Lot 26").

27. On or about March 2, 2016, Susan filed three Petitions to Partition to force the sale of three of the Decedent's parcels of real estate, namely the Property (16E0020), Lot 25.1 Lincoln Point, Charlton (16E0019) and Lot 25.6 Lincoln Point, Charlton (16E0021).

The Personal Representative filed her First Account with the Court. After payment of certain debts, but with no payment for the Personal Representative's services, the remaining personal property was valued at \$39,807.75 and real estate was valued at \$637,775.10², exclusive of the mortgage.

²The Trial Court's Order indicates it was \$677,582.85 but both parties recognize in their submissions the

The Personal Representative sold the real estate located at 88 Ramshorn Road, Charlton, Massachusetts for \$216,000 pursuant to a license to sell. The net proceeds from the sale of 88 Ramshorn Road, Charlton, Massachusetts were ordered to be held in escrow. By agreement of the parties, the Personal Representative sold 29 Lincoln Point Road and Lot 25.1 for \$380,000.

Lot 25.6 Lincoln Point, unimproved real estate, remains unsold and is the subject of one of Susan's Petition for Partition (16E0021). Lot 26 in Charlton, Massachusetts, unimproved real estate which is not the subject of a Petition for Partition, remains unsold.

Personal Representative brought a Motion for Partial Summary Judgment with respect to her Counterclaim for Declaratory Judgment. She sought a Declaratory Judgment that G.L. c. 191, §15: a) prohibits partition by the surviving spouse; b) prohibits a lump-sum distribution of Susan's interest in the real estate based on a present valuation; c) after the payment of \$25,000, during Susan's lifetime, she would receive only the net income from the excess of her share of the personal property, real estate and

real property was valued at \$637,775.10, exclusive of the mortgage. Total value of estate was \$677,582.85.

any proceeds from her share of the sale of the real estate. The excess funds would be held in Trust and upon Susan's death, the Children would receive the principal of said Trust. Susan counterclaimed, seeking a declaration that she holds a life estate, is entitled to seek partition and that she receive her 1/3 life estate from the net proceeds.

IV. Statement of the Issues

This case arises from a Probate Court's reservation and report of the following issues of law which were properly preserved in the lower court.

1. Whether a Surviving Spouse has standing to bring an action for petition for partition of real estate, when her sole interest in the subject property originates from G.L. c. 191, § 15?
2. What benefits and/or obligations does the phrase "vested in him or her for life" as contained in G.L. c. 191, § 15 convey to the Surviving Spouse? Specifically, is a one-third life estate in the real estate created in favor of the Surviving Spouse; and, does the Surviving Spouse have a duty to contribute to the expenses of real estate during her lifetime?
3. Upon the sale of real estate of which the Surviving Spouse holds an interest pursuant to G.L. c. 191, § 15, what portion of the proceeds if any, should be distributed to her free from trust?

V. ARGUMENT

Susan's sole interest in Decedent's estate derives from her election to take the spousal elective share, as provided by G.L. c. 191, § 15. "Prior to 1956, the Elective Share Statute allowed the surviving spouse to waive the Will and claim such portion of the estate of the deceased as she would have taken if the deceased had died intestate. However, in 1956 this portion of the Statute was revised to allow a surviving spouse to only claim such portion of the Estate of the deceased as he or she is given the right to claim under" G.L. c. 191, Section 15. Bongaards v. Millen, 440 Mass. 10, 20 n.8 (2003).

G.L. c. 191, Section 15 ("the Statute") states:

"The surviving husband or wife of a deceased person. . . within six (6) months after the probate of the Will of such deceased, may file in the Registry of Probate a writing signed by him or by her, waiving any provisions that may have been made in it for him or for her, or claiming such portion of the Estate of the deceased as he or she is given the right to claim under this Section, and if the deceased left issue, he or she shall there upon take one-third (1/3) of the personal and one-third (1/3) of the real property . . . except that in either case if he or she would thus take real and personal property to an amount exceeding \$25,000 in value, he or she shall receive, in addition

to that amount, *only the income during his or her life of the excess of his or her share of such Estate above that amount*, the personal property to be held in Trust and the *real property vested in him or her for life*, from the death of the deceased. [...] If the real and personal property of the deceased which the surviving husband or wife takes under the foregoing provisions exceeds \$25,000 in value, and the...wife is to take only \$25,000 absolutely, the \$25,000, above given absolutely shall be paid out of that part of the personal property in which the...wife is interested; and if such part is insufficient the deficiency shall, upon the Petition of any person interested, be paid from the sale or mortgage in fee, in the manner provided for the payment of debts or legacies, of that part of the real property in which he or she is interested. Such sale or mortgage may be made either before or after such part is set off from other real property of the Decedent for the life of the husband or widow. . . . (emphasis added)"

There are no cases that address how G.L. c. 191, § 15 should be administered. Consequently, there is disagreement within the Massachusetts Bar as to its application. See, Curran, When Good Things Happen to Bad People: The Spousal Elective Share, M.B.A. Section Review, V10, N3, p. 27 (2008); Levitan, What are the Effects when a Surviving Spouse Opts for the Elective Share?, 31 ESTPLAN 597 (2004). Efforts to alter the forced spousal elective share have failed, even after the implementation of the Massachusetts Uniform Probate Act. See generally, Brandon Gee, Emotionally

Charged Spousal Share Issue Divides Attorneys, Mass. Law. Wkly, March 21, 2013. However, Susan should not be empowered to expand her interest in Decedent's estate through a partition action, nor should she receive a greater interest in Decedent's estate than prescribed by G.L. c. 191, § 15.

1. G.L. c. 191, § 15 does not grant Susan standing to force the partition of real estate.

Susan's election to claim her portion of Decedent's Estate under G.L. c. 191, §15 ("Statute") limited her rights only to those granted to her by Statute. Bongaards, 440 Mass. at 20 n.8 (2003). "[A] statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." Hanlon v. Rollins, 286 Mass. 444, 447 (1934). "[W]e look to the language of the entire statute, not just a single sentence, and attempt to interpret all of its terms "harmoniously to effectuate

the intent of the Legislature." Com. v. Hanson H., 464 Mass. 807, 810 (2013). Every expression should be interpreted to receive some effect, with none of the language rendered superfluous. Howe v. Tarvezian, 73 Mass.App.Ct. 10, 18(2008).

The spousal elective share, after receipt of only \$25,000 absolutely, resembles the interests of an income beneficiary of a trust who holds only an equitable interest. *See generally*, G.L. c. 191, § 15; Steele v. Kelley, 46 Mass.App.Ct. 712, 729(1999). The only circumstance when a surviving spouse could force the sale of the real estate is to satisfy her payment of only \$25,000 absolutely from her respective share. *See*, G.L. c. 191, § 15.³

The Statute does not grant any right of partition and restricts when real estate may be sold. Susan seeks more than what the Statute provides. The court should "not add words to a statute that the Legislature did not put there, either by inadvertent

³The statute is clear that the \$25,000 must be paid from the surviving spouse's share of the estate. Accordingly, if the estate has less than \$75,000 in personal property, real estate may need to be sold to satisfy surviving spouse's distribution.

omission or by design." Commonwealth v. McLeod, 437 Mass. 286, 294(2002).

"Petitions for partition are comprehensively governed by c. 241, and that statutory scheme is "apparently designed to embrace the whole subject," superseding previous provisions of the statutory and common law." Stylianopoulos v. Stylianopoulos, 17 Mass.App.Ct. 64, 66 n.4. (1983), *quoting*, O'Connor v. Boyden, 268 Mass. 111 , 114-115 (1929). Only a person who holds a present, undivided legal estate in land, not subject to redemption, shall be entitled to have partition. G.L. c. 241, § 1. Partition is not available to tenants by the entirety, tenants in partnership or estates held in trust. See, Maher v. Pervinich, 28 Mass.App.Ct. 970, 970 (1990); Webber v. Rosenberg, 318 Mass. 768, 769 (1945); Devine v. Deckrow, 299 Mass.28, 33(1937). It should not be available to holders of a spousal elective share.

The partition statute "does not authorize the partition of future interests by a life tenant, and historically we have denied such partition."
Hershman-Tcherepnin v. Tcherepnin, 452 Mass. 77,

94(2008). Susan claims a 1/3 life estate while she seeks partition of her interest from the holders of a tenancy in common and the remainder interest.⁴ Her share does not convey "a right to alienate or consume it and thus to deprive the [Decedent's children] of their expected interest in it." *See generally, Hinckley v. Clarkson*, 331 Mass. 453, 454-455 (1954).

The statute merely vests in Susan her right to income in the excess in her share of real estate for life, as explained below. As Susan's interest is not a legal or life estate subject to partition, she does not have standing to bring an action for partition.

2. The phrase "vested in him or her for life" conveys an income interest to Susan - not a life estate.

The phrase "vested in him or her for life" in G.L. c. 191, § 15 conveys to Susan an interest in the income of the real estate during her lifetime. The Statute it is silent as to any obligations or right of occupancy, suggesting the interest is limited to only

⁴Susan's Petitions for Partition fail to state who holds the remaining 2/3 life estate and lists the Decedent's children's interests as "tenancy in common subject to life estate interest in an undivided 1/3 interest."

the income of the excess of her share. G.L. c. 191, § 15 does not convey a traditional life estate with all the benefits and obligations.

Susan takes the position that the words "real property vested in ...her for life" grants her a 1/3 life estate in all the real estate. This position is erroneous. To hold otherwise would render entire phrases superfluous because the statute grants her "only the income during...her life of the excess of... her share of such Estate." G.L. c. 191, § 15. Susan could not occupy the real estate because she would receive more than "only the income" of the excess of her share.

Susan's one-third share of the personal and real estate exceeds \$25,000. Therefore, Susan is entitled to receive "only \$25,000 absolutely" and "only the income in excess" of her share. Personal property will be held in trust and her right to receive one-third of the income from the real property is vested in her for life. G.L. c. 191, § 15. This reading would comport with the requirements of statutory construction to consider all of the language in a statute.

3. Susan is not entitled to receive any of the proceeds from the sale of real estate outright and free of trust that exceeds her distribution of only \$25,000 absolutely.

Susan will "take one third of the personal and one third of the real property." G.L. c. 191, § 15. Her share is limited to \$25,000 and "in addition to that amount, only the income during...her life of the excess of...her share of such estate above that amount, the personal property to be held in trust and the real property vested in him or her for life, from the death of the deceased." Id. The Statute takes pains to ensure that "wife is to take only \$25,000 absolutely." These phrases must be given effect.

"Under Massachusetts law...there is no provision for outright payment of the elective share, nor is there any provision for commutation of the life estate under state law." What are the Effects when a Surviving Spouse Opts for the Elective Share?, Shari A. Levitan, 31 ESTPLAN 597 (2004); see also, Boston Bar Ass'n, Report of the Ad Hoc, Elective Share Committee, March 2012. Partition statutes cannot circumvent the restrictions of G.L. c. 191, §15.

The plain language of the Statute limits the surviving spouse's interest in the one-third share after distribution of only \$25,000 absolutely to "only to the income" generated by the real estate, if any, for her life. Otherwise would impermissibly ignore entire phrases of the Statute, the limitation on sums to be distributed absolutely and import language that simply does not exist. See generally, Hershman-Tcherepnin, 70 Mass.App.Ct. at 221(life estate value significantly larger than the remainder interest). Any distribution of \$25,000 in addition to the present "life estate value," would allow her to receive more than only \$25,000 absolutely.

Susan claims that G.L. c. 65C, §5 somehow entitles her to a lump-sum distribution from the sale of real estate based upon the actuarial calculation of her share. This argument ignores the limiting language of G.L. c. 191, § 15. G.L. c. 65C, §5 is only applicable in valuing the gross probate estate for tax purposes. This statute is irrelevant to the issue of whether the plain language of G.L. c. 191, § 15 can be circumvented by partition, with a distribution in excess of the statutory mandate of \$25,000.

The phrase "only twenty-five thousand dollars absolutely" gives a clear indication of the Legislature's intent that no other lump sum distributions shall be tendered to a spouse who claims an elective share. The Legislature's use of the words "only" and "absolutely" are a clear indication from the Legislature that a surviving spouse would not be entitled to a greater lump-sum payment than \$25,000.

In the event of the sale of real estate subject to the spousal elective share, the excess statutory share should be placed into trust, with the net income paid to the surviving spouse for life. This position is supported by other statutory provisions.

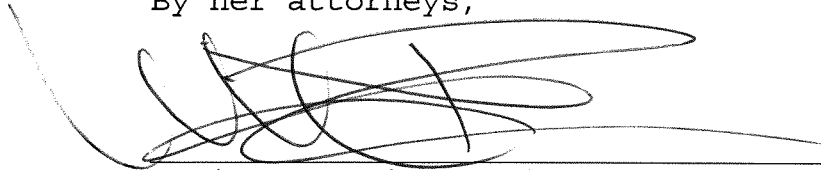
G.L. c. 241, § 35 empowers the court to appoint a trustee to receive, hold, manage and invest the proceeds of the sale of real estate if there are estates in succession, with the annual income of such share to be paid to the owner of each successive estate for years or life until it terminates. As argued *infra*, the parties hold estates in succession. Rights to the income of the real estate (or the net proceeds from the sale) are measured by Susan's life.

Thereafter, the Children will receive Susan's 1/3 share upon Susan's death absolutely. Given the clear statutory language, Susan cannot assert an election under G.L. c. 191, § 15 and attempt to utilize other unrelated statutes to seek a larger lump-sum payment than that granted by Statute.

VI. Direct Appellate Review Is Appropriate

The issues presented by this Appeal are issues of first impression and of substantial importance to the public and the legal community. There is no guidance by this Court as to how the forced spousal elective share should be administered and there is disagreement in the bar as to its application. It would benefit the legal community and for the general public for this Court to address and resolve these issues. Accordingly, this application should be granted.

Respectfully submitted,
BRENDA MACGRATH, as Personal
Representative of the Estate of
Raymond Ciani,
By her attorneys,

A handwritten signature in black ink, appearing to be "Maria L. Remillard", written over a horizontal line.

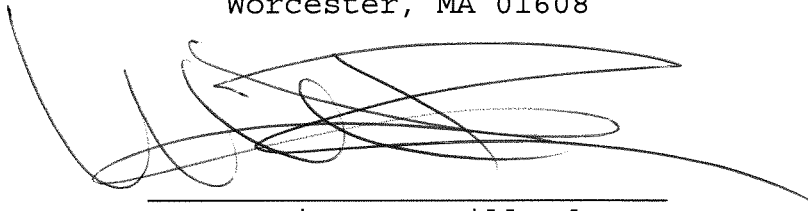
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Dated: April 23, 2018

CERTIFICATE OF SERVICE

I, Maria L. Remillard, hereby certify that I have served a copy of the foregoing via first-class mail, postage prepaid, this 23rd day of April, 2018, to:

Katherine A. Bagdis, Esq.
MOUNTAIN DEARBORN & WHITING, LLP
370 Main Street, Suite 800
Worcester, MA 01608

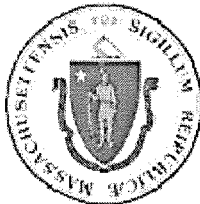
A handwritten signature in black ink, appearing to be 'Maria L. Remillard', written over a horizontal line.

Maria L. Remillard

ADDENDUM

ADDENDUM – TABLE OF CONTENTS

1. Certified Copy of Docket
2. Memorandum of Decision and Order
3. Reservation and Report of Case



**MASSACHUSETTS
WORCESTER PROBATE AND FAMILY COURT
Docket Report**

WO16E0019PP Ciani, Susan vs. McGrath, Brenda L

CASE TYPE:	Equity - Partition	FILE DATE:	03/02/2016
ACTION CODE:	PP	CASE TRACK:	
DESCRIPTION:	Petition to partition	CASE STATUS:	Active
CASE DISPOSITION DATE		STATUS DATE:	03/02/2016
CASE DISPOSITION:	Active	CASE SESSION:	
CASE JUDGE:	Roach, Gregory V		

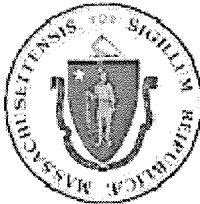
LINKED CASE

WO15P1760EA	WO16E0021PP	WO16E0020PP
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PARTIES

Petitioner Ciani, Susan 4 Linwood Street Apt 1 Charlton, MA 01507	Katherine A Bagdis Mountain Dearborn Mountain Dearborn 370 Main St Suite 800 Worcester, MA 01608 Work Phone (508) 756-2423 Added Date: 03/03/2016	678653
Objector Ciani, Clay H LKA - 16 Westside Drive Unit 114 North Grosvenordale, CT 06255	Maria L Remillard Bowditch & Dewey, LLP Bowditch & Dewey, LLP 311 Main St PO Box 15156 Worcester, MA 01615-0156 Work Phone (508) 926-3417 Added Date: 05/05/2016	654949
Objector Ciani, John J 23 Lincoln Point Road Charlton, MA 01507	Maria L Remillard Bowditch & Dewey, LLP Bowditch & Dewey, LLP 311 Main St PO Box 15156 Worcester, MA 01615-0156 Work Phone (508) 926-3417 Added Date: 05/05/2016	654949

A TRUE COPY
ATTEST:
Stephanie H. Fathallah
REGISTER



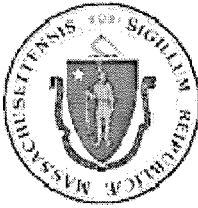
**MASSACHUSETTS
WORCESTER PROBATE AND FAMILY COURT
Docket Report**

Objector Ciani, William R c/o Ritz Carlson Floor 69 160 E Pearson Street Chicago, IL 60611	<div align="right">654949</div> Maria L Remillard Bowditch & Dewey, LLP Bowditch & Dewey, LLP 311 Main St PO Box 15156 Worcester, MA 01615-0156 Work Phone (508) 926-3417 Added Date: 05/05/2016
Objector McGrath, Brenda L 25 Lincoln Point Road Charlton, MA 01507	<div align="right">654949</div> Maria L Remillard Bowditch & Dewey, LLP Bowditch & Dewey, LLP 311 Main St PO Box 15156 Worcester, MA 01615-0156 Work Phone (508) 926-3417 Added Date: 05/05/2016

FINANCIAL DETAILS					
Date	Fees/Fines/Costs	Assessed	Paid	Dismissed	Balance
03/02/2016	FEE Partition Petition, MGL 262 s.40 Receipt: 108613 Date: 03/03/2016	240.00	240.00	0.00	0.00
03/02/2016	Civil Filing Fee Surcharge due. Receipt: 108613 Date: 03/03/2016	15.00	15.00	0.00	0.00
03/02/2016	Order of Notice,Citation, Precept, MGL 262 s.4B Receipt: 108613 Date: 03/03/2016	15.00	15.00	0.00	0.00
Total		270.00	270.00	0.00	0.00

Deposit Account(s) Summary	Received	Applied	Checks Paid	Balance
Total				

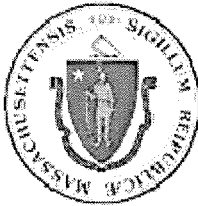
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**MASSACHUSETTS
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INFORMATIONAL DOCKET ENTRIES

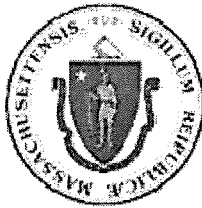
Date	Ref	Description	Judge
03/03/2016	1	Petition to Partition	
03/07/2016	2	Citation Issued Returnable 05/10/2016	
05/05/2016	3	Appearance by Attorney Maria L. Rockwell, Esq. for Brenda L McGrath, John J Ciani, Clay H Ciani, William R Ciani	
05/11/2016	4	Respondent's Answer and Counterclaim to Petition to Partition	
05/16/2016	5	Motion to Appoint a Commissioner Bagdis, Esq., Katherine A. (Attorney)	
06/10/2016	6	Affidavit of Objection of Brenda MacGrath	
06/10/2016	7	Affidavit of Objection of Clay H. Ciani	
06/10/2016	8	Affidavit of Objection of John J. Ciani	
06/10/2016	9	Affidavit of Objection of William R. Ciani	
07/28/2016	10	Citation Filed; Served as Ordered	
12/22/2016	11	Motion To Enlarge time to file answer to counterclaim	
12/27/2016	12	Motion To Extend Verified Emergency Time to Serve Opposition	
12/27/2016	13	Motion To Extend Time to Serve ALLOWED on 12/27/2016 File Reference # 12	Bailey
12/28/2016	16	Respondent's Opposition to Motion to Enlarge Time to File an Answer	
01/03/2017	14	Motion To Enlarge Time to File Answer to Counterclaim DENIED on 12/28/2016 File Reference # 11 without prejudice (see order of 12/28/2016)	Dunn
01/03/2017	15	Order dated 12/28/2016	Dunn
01/09/2017	17	Motion To Enlarge Time to File Answer to Counterclaim	
01/09/2017	19	Affidavit Of Susan Ciani in Support of Petitioner's Opposition to Brenda McGrath Motion for Partial Summary Judgment and Petitioner's Cross Motion for Summary Judgment	
01/09/2017	18	Affidavit Of Katherine A Bagdis in Support of Motion to Enlarge Time to File Counterclaim	
01/09/2017	20	Petitioner/Respondent in Counterclaim's Answer to Respondent/McGrath et als Counterclaim	
01/27/2017	21	Motion For Partial Summary Judgment on Counterclaim for Declaratory Judgment (Brenda MacGrath's)	
01/27/2017	22	Brenda MacGrath's Statement of Material Facts in Support of Motion for Partial Summary Judgment	
01/27/2017	23	Brenda MacGrath's Memorandum in Support of Motion for Partial Summary Judgment	
01/27/2017	24	Motion For Summary Judgment (Petitioner's Cross)	
01/27/2017	25	Memorandum in Opposition to Brenda MacGrath's Motion for Partial Summary Judgment on Counterclaim for Declaratory Judgment	
01/27/2017	26	Affidavit Of Katherine A. Bagdis	



**MASSACHUSETTS
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01/27/2017	27	Motion To Strike (Petitioner's)	
01/27/2017	28	Brenda MacGrath's Opposition to Motion to Strike	
01/27/2017	29	Motion To Strike Affidavit of Susan Ciani dated 1/6/17 (Brenda MacGrath's)	
01/27/2017	30	Respondent's Memorandum in Opposition to Susan Ciani's Cross-Motion for Summary Judgment	
01/27/2017	31	Respondents' Opposition to Motion to Enlarge Time to File Answer	
01/27/2017	32	Certificate of Other Notice of Filing Pursuant to Supplemental Probate and Family Court Rule 27c	
07/10/2017	33	Motion To Enlarge Time to File Answer to Counterclaim ALLOWED on 01/30/2017 File Reference # 17	Rainaud
12/18/2017	34	Order (on Brenda MacGrath's Motion for Partial Summary Judgment and Susan Ciani's Cross-Motion for Summary Judgment) dated 12/15/2017	Sandman
		Judge: Sandman, Hon. Kathleen A	
02/08/2018	35	Memorandum and Order for Status Conference dated 02/07/2018	Sandman
		Judge: Sandman, Hon. Kathleen A	
03/21/2018	36	Memorandum of Decision and Order dated 03/20/2018	Sandman
		Judge: Sandman, Hon. Kathleen A	
03/21/2018	37	Reservation and Report of Case dated 03/20/2018	Sandman
		Judge: Sandman, Hon. Kathleen A	

A TRUE COPY
 ATTEST:
 Stephanie M. Folger
 REC'D



**MASSACHUSETTS
WORCESTER PROBATE AND FAMILY COURT
Docket Report**

WO16E0020PP Ciani, Susan vs. McGrath, Brenda L

CASE TYPE:	Equity - Partition	FILE DATE:	03/02/2016
ACTION CODE:	PP	CASE TRACK:	
DESCRIPTION:	Petition to partition		
CASE DISPOSITION DATE		CASE STATUS :	Active
CASE DISPOSITION:	Active	STATUS DATE :	03/02/2016
CASE JUDGE:	Roach, Gregory V	CASE SESSION:	

LINKED CASE

WO15P1760EA

WO16E0021PP

WO16E0019PP

PARTIES

Petitioner

Ciani, Susan
4 Linwood Street
Apt 1
Charlton, MA 01507

Katherine A Bagdis
Mountain Dearborn
Mountain Dearborn
370 Main St
Suite 800
Worcester, MA 01608
Work Phone (508) 756-2423
Added Date: 03/03/2016

678653**Objector**

Ciani, Clay H
LKA - 16 Westdide Drive
Unit 114
North Grosvenordale, CT 06255

Maria L Remillard
Bowditch & Dewey, LLP
Bowditch & Dewey, LLP
311 Main St
PO Box 15156
Worcester, MA 01615-0156
Work Phone (508) 926-3417
Added Date: 05/05/2016

654949**Objector**

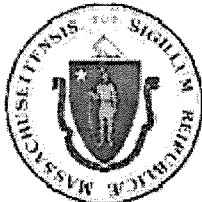
Ciani, John J
23 Lincoln Point Road
Charlton, MA 01507

Maria L Remillard
Bowditch & Dewey, LLP
Bowditch & Dewey, LLP
311 Main St
PO Box 15156
Worcester, MA 01615-0156
Work Phone (508) 926-3417
Added Date: 05/05/2016

654949

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REGISTER



**MASSACHUSETTS
WORCESTER PROBATE AND FAMILY COURT
Docket Report**

Objector Ciani, William R c/o Ritz Carlton, Floor 69 160 E Pearson Street Chicago, IL 60611	654949 Maria L Remillard Bowditch & Dewey, LLP Bowditch & Dewey, LLP 311 Main St PO Box 15156 Worcester, MA 01615-0156 Work Phone (508) 926-3417 Added Date: 05/05/2016
Objector McGrath, Brenda L 25 Lincoln Point Road Charlton, MA 01507	654949 Maria L Remillard Bowditch & Dewey, LLP Bowditch & Dewey, LLP 311 Main St PO Box 15156 Worcester, MA 01615-0156 Work Phone (508) 926-3417 Added Date: 05/05/2016
Objector Southbridge Savings Bank 253 Main Street Southbridge, MA 01550	

FINANCIAL DETAILS					
Date	Fees/Fines/Costs	Assessed	Paid	Dismissed	Balance
03/02/2016	FEE Partition Petition, MGL 262 s.40 Receipt: 108614 Date: 03/03/2016	240.00	240.00	0.00	0.00
03/02/2016	Civil Filing Fee Surcharge due. Receipt: 108614 Date: 03/03/2016	15.00	15.00	0.00	0.00
03/02/2016	Order of Notice,Citation, Precept, MGL 262 s.4B Receipt: 108614 Date: 03/03/2016	15.00	15.00	0.00	0.00
Total		270.00	270.00	0.00	0.00

Deposit Account(s) Summary	Received	Applied	Checks Paid	Balance
Total				



**MASSACHUSETTS
WORCESTER PROBATE AND FAMILY COURT
Docket Report**

INFORMATIONAL DOCKET ENTRIES

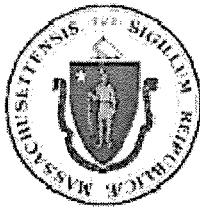
Date	Ref	Description	Judge
03/02/2016	1	Petition	
03/07/2016	2	Citation Issued Returnable 05/10/2016	
05/05/2016	3	Appearance by Attorney Maria L. Rockwell, Esq. for Brenda L McGrath, Clay H Ciani, John J Ciani, William R Ciani	
05/11/2016	4	Respondent's Answer and Counterclaim to Petition to Partition	
05/16/2016	5	Motion to Appoint a Commissioner Bagdis, Esq., Katherine A. (Attorney)	
06/10/2016	6	Affidavit of Objection of Brenda MacGrath	
06/10/2016	7	Affidavit of Objection of Clay H. Ciani	
06/10/2016	8	Affidavit of Objection of John J. Ciani	
06/10/2016	9	Affidavit of Objection of William R. Ciani	
07/28/2016	10	Citation Filed; Served as Ordered	
12/22/2016	11	Motion To enlarge time to file answer to counterclaim	
12/27/2016	12	Motion To Extend Verified Emergency Time to Serve Opposition	
12/27/2016	13	Motion To Extend Time to Serve ALLOWED on 12/27/2016 File Reference # 12	Bailey
12/28/2016	32	Respondent's Opposition to Motion to Enlarge Time to File Answer filed by Calo Bagdis, Esq., Katherine A. (Attorney) on behalf of Ciani, Susan (Petitioner)	
01/03/2017	14	Motion To Enlarge Time to File Answer to Counterclaim DENIED on 12/28/2016 File Reference # 11 without prejudice (see order of 12/28/2016)	Dunn
01/03/2017	15	Order dated 12/28/2016	Dunn
01/09/2017	16	Motion To Enlarge Time to File Answer to Counterclaim	
01/09/2017	17	Petitioner/Respondent in Counterclaim's Answer to Respondent/Petitioner's in Counterclaim Counterclaim	
01/09/2017	18	Affidavit Of Katherine A Bagdis in Support or Motion to Enlarge Time to File Answer to Counterclaim	
01/09/2017	19	Affidavit Of Susan Ciani in Support of Petitioner's Opposition to Brenda McGrath Motion for Partial Summary Judgment and Petitioner's Cross Motion for Summary Judgment	
01/27/2017	20	Motion For Partial Summary of Judgment on Counterclaim for Declaratory Judgment (Brenda MacGrath's)	
01/27/2017	21	Brenda MacGrath's Statement of Material Facts in Support of Motion for Partial Summary Judgment	
01/27/2017	22	Brenda MacGrath's Memorandum in Support of Motion for Partial Summary Judgment	
01/27/2017	23	Motion For Summary Judgment (Petitioner's Cross)	
01/27/2017	24	Petitioner's Memorandum in Opposition to Brenda MacGrath's Motion for Partial Summary Judgment on Counterclaim for Declaratory Judgment	



**MASSACHUSETTS
WORCESTER PROBATE AND FAMILY COURT
Docket Report**

01/27/2017	25	Affidavit Of Katherine A. Bagdis	
01/27/2017	26	Motion To Strike (Petitioner's)	
01/27/2017	27	Brenda MacGrath's Opposition to Motion to Strike	
01/27/2017	28	Motion To Strike Affidavit of Susan Ciani dated 1/6/17	
01/27/2017	29	Respondent's Memorandum in Opposition to Susan Ciani's Cross-Motion for Summary Judgment	
01/27/2017	30	Opposition to Motion to Enlarge Time to File Answer	
01/27/2017	31	Certificate of Other Notice of Filing Pursuant to Supplemental Probate & Family Court Rule 27c	
07/10/2017	33	Motion To Enlarge Time to File Answer to Counterclaim ALLOWED on 01/30/2017 File Reference # 16	Rainaud
12/18/2017	34	Order (on Brenda MacGrath's Motion for Partial Summary Judgment and Susan Ciani's Cross-Motion for Summary Judgment) dated 12/15/2017	Sandman
		Judge: Sandman, Hon. Kathleen A	
02/08/2018	35	Memorandum and Order for Status Conference dated 02/07/2018	Sandman
		Judge: Sandman, Hon. Kathleen A	
03/21/2018	36	Memorandum of Decision and Order dated 03/20/2018	Sandman
		Judge: Sandman, Hon. Kathleen A	
03/21/2018	37	Reservation and Report of Case dated 03/20/2018	Sandman
		Judge: Sandman, Hon. Kathleen A	

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**MASSACHUSETTS
WORCESTER PROBATE AND FAMILY COURT
Docket Report**

WO16E0021PP Ciani, Susan vs. McGrath, Brenda L

CASE TYPE:	Equity - Partition	FILE DATE:	03/02/2016
ACTION CODE:	PP	CASE TRACK:	
DESCRIPTION:	Petition to partition		
CASE DISPOSITION DATE		CASE STATUS :	Active
CASE DISPOSITION:	Active	STATUS DATE :	03/02/2016
CASE JUDGE:	Roach, Gregory V	CASE SESSION:	

LINKED CASE

WO15P1760EA

WO16E0020PP

WO16E0019PP

PARTIES

Petitioner

Ciani, Susan
4 Linwood Street
Apt 1
Charlton, MA 01507

678653

Katherine A Bagdis
Mountain Dearborn
Mountain Dearborn
370 Main St
Suite 800
Worcester, MA 01608
Work Phone (508) 756-2423
Added Date: 03/03/2016

Objector

Ciani, Clay H
LKA - 16 Westside Drive
Unit 114
North Grosvenordale, CT 06255

654949

Maria L Remillard
Bowditch & Dewey, LLP
Bowditch & Dewey, LLP
311 Main St
PO Box 15156
Worcester, MA 01615-0156
Work Phone (508) 926-3417
Added Date: 05/05/2016

Objector

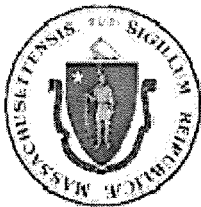
Ciani, John J
23 Lincoln Point Road
Charlton, MA 01507

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Maria L Remillard
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Bowditch & Dewey, LLP
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Worcester, MA 01615-0156
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Added Date: 05/05/2016

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Stephanie H. Entin
REGISTRAR

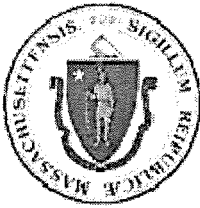


**MASSACHUSETTS
WORCESTER PROBATE AND FAMILY COURT
Docket Report**

<p>Objector Ciani, William R c/o Ritz Charlton, Floor 69 160 E Pearson Street Chicago, IL 60611</p> <p>Objector McGrath, Brenda L 25 Lincoln Point Road Charlton, MA 01507</p>	<p style="text-align: right;">654949</p> <p>Maria L Remillard Bowditch & Dewey, LLP Bowditch & Dewey, LLP 311 Main St PO Box 15156 Worcester, MA 01615-0156 Work Phone (508) 926-3417 Added Date: 05/05/2016</p> <p style="text-align: right;">654949</p> <p>Maria L Remillard Bowditch & Dewey, LLP Bowditch & Dewey, LLP 311 Main St PO Box 15156 Worcester, MA 01615-0156 Work Phone (508) 926-3417 Added Date: 05/05/2016</p>
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FINANCIAL DETAILS					
Date	Fees/Fines/Costs	Assessed	Paid	Dismissed	Balance
03/02/2016	FEE Partition Petition, MGL 262 s.40 Receipt: 108615 Date: 03/03/2016	240.00	240.00	0.00	0.00
03/02/2016	Civil Filing Fee Surcharge due. Receipt: 108615 Date: 03/03/2016	15.00	15.00	0.00	0.00
03/02/2016	Order of Notice, Citation, Precept, MGL 262 s.4B Receipt: 108615 Date: 03/03/2016	15.00	15.00	0.00	0.00
Total		270.00	270.00	0.00	0.00

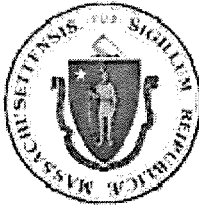
Deposit Account(s) Summary	Received	Applied	Checks Paid	Balance
Total				



**MASSACHUSETTS
WORCESTER PROBATE AND FAMILY COURT
Docket Report**

INFORMATIONAL DOCKET ENTRIES

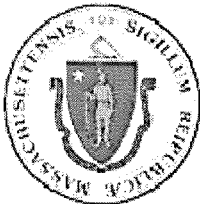
Date	Ref	Description	Judge
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01/03/2017	15	Order dated 12/28/2016	Dunn
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01/27/2017	24	Affidavit Of Katherine A. Bagdis	
01/27/2017	25	Motion To Strike (Petitioner's)	



**MASSACHUSETTS
WORCESTER PROBATE AND FAMILY COURT
Docket Report**

01/27/2017	26	Brenda MacGrath's Opposition to Strike	
01/27/2017	27	Motion To Strike Affidavit of Susan Ciani dated 1/6/17 (Brenda MacGrath's)	
01/27/2017	28	Respondent's Memorandum in Opposition to Susan Ciani's Cross-Motion for Summary Judgment	
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		Judge: Sandman, Hon. Kathleen A	
02/08/2018	34	Memorandum and Order for Status Conference dated 02/07/2018	Sandman
		Judge: Sandman, Hon. Kathleen A	
03/21/2018	35	Memorandum of Decision and Order dated 03/20/2018	Sandman
		Judge: Sandman, Hon. Kathleen A	
03/21/2018	36	Reservation and Report of Case dated 03/20/2018	Sandman
		Judge: Sandman, Hon. Kathleen A	

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ATTEST:
Stephanie H. [Signature]
REGISTRAR



**MASSACHUSETTS
WORCESTER PROBATE AND FAMILY COURT
Docket Report**

WO15P1760EA In the matter of: Ciani, Raymond J

CASE TYPE:	Estates and Administration	FILE DATE:	06/03/2015
ACTION CODE:	IP	CASE TRACK:	
DESCRIPTION:	Informal Probate of Will with Appointment of Personal Representative		
CASE DISPOSITION DATE	06/03/2015	CASE STATUS :	Closed
CASE DISPOSITION:	Order for Informal Probate and/or Appt of PR	STATUS DATE :	06/03/2015
CASE JUDGE:	Roach, Gregory V	CASE SESSION:	

LINKED CASE

WO16E0021PP

WO16E0020PP

WO16E0019PP

PARTIES

Decedent

Ciani, Raymond J

Petitioner

Ciani, Susan
4 Linwood Street
Apt. 1
Webster, MA 01570

Petitioner

MacGrath, Brenda L
25 Lincoln Point Road
Charlton, MA 01507

Personal Representative

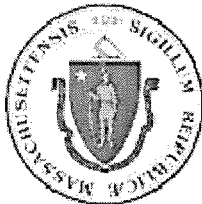
MacGrath, Brenda L
25 Lincoln Point Road
Charlton, MA 01507

Private Counsel**678653**

Katherine A Bagdis
Mountain Dearborn
Mountain Dearborn
370 Main St
Suite 800
Worcester, MA 01608
Work Phone (508) 756-2423
Added Date: 06/24/2016

Private Counsel**654949**

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Bowditch & Dewey, LLP
Bowditch & Dewey, LLP
311 Main St
PO Box 15156
Worcester, MA 01615-0156
Work Phone (508) 926-3417
Added Date: 09/01/2017

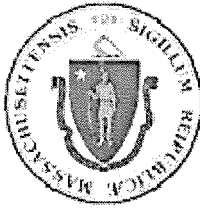


**MASSACHUSETTS
WORCESTER PROBATE AND FAMILY COURT
Docket Report**

FINANCIAL DETAILS

Date	Fees/Fines/Costs	Assessed	Paid	Dismissed	Balance
06/03/2015	FEE Informal Probate of Will and/or Appointment of Personal Representative Receipt: 97786 Date: 06/03/2015	375.00	375.00	0.00	0.00
06/03/2015	Civil Filing Fee Surcharge due. Receipt: 97786 Date: 06/03/2015	15.00	15.00	0.00	0.00
06/09/2016	FEE Sale of Real Estate vested or contingent remainders gross value >\$100K<\$250K, MGL 262 s.40 Receipt: 112467 Date: 06/09/2016	250.00	250.00	0.00	0.00
06/09/2016	Order of Notice,Citation, Precept, MGL 262 s.4B Receipt: 112467 Date: 06/09/2016	15.00	15.00	0.00	0.00
08/02/2016	FEE Render Inventory or Account Receipt: 114401 Date: 08/02/2016	75.00	75.00	0.00	0.00
10/13/2016	FEE Value is not less than \$500,000 and not more than \$1,000,000 MGL 262 s.40 Receipt: 117308 Date: 10/13/2016	200.00	200.00	0.00	0.00
06/14/2017	FEE Render Inventory or Account Receipt: 127049 Date: 06/20/2017	75.00	75.00	0.00	0.00
08/09/2017	Citation, MGL 262 s.4B Receipt: 129166 Date: 08/14/2017	15.00	15.00	0.00	0.00
Total		1,020.00	1,020.00	0.00	0.00

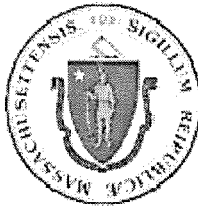
Deposit Account(s) Summary	Received	Applied	Checks Paid	Balance
Total				



**MASSACHUSETTS
WORCESTER PROBATE AND FAMILY COURT
Docket Report**

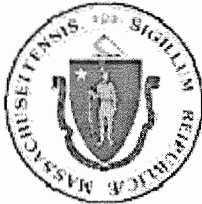
INFORMATIONAL DOCKET ENTRIES

Date	Ref	Description	Judge
06/03/2015	1	Petition for Informal Probate	
06/03/2015	2	Certificate of Death	
06/03/2015	3	Last Will of Raymond J. Ciani dated June 2, 2000, 4 pages, Allowed June 3, 2015	Meagher
06/03/2015	4	Return of Service on Notice of Informal Probate	
06/03/2015	5	Bond without Sureties	
06/03/2015	6	Affidavit as to Military Service	
06/03/2015	7	An Interested Person, Clay H Ciani , Filed Form MPC 455 to Assent and Waiver of Notice, Waiver of Sureties	
06/03/2015	8	An Interested Person, John J Ciani , Filed Form MPC 455 to Assent and Waiver of Notice, Waiver of Sureties	
06/03/2015	9	An Interested Person, William R Ciani , Filed Form MPC 455 to Assent and Waiver of Notice, Waiver of Sureties	
06/03/2015	10	An Interested Person, Susan Ciani , Filed Form MPC 455 to Assent and Waiver of Notice, Waiver of Sureties	
06/04/2015		Letters of Authority for Personal Representative	
06/04/2015	11	Bond of Brenda L. MacGrath Approved 06-03-2015	Meagher
06/04/2015	12	Order for Informal Probate of Will and/or Appointment of Brenda L. MacGrath as Personal Representative 06-03-2015	Meagher
07/03/2015	13	Waiver of Will	
07/03/2015	14	Appearance by Attorney Francis J Russell, Esq. for Susan Ciani	
07/21/2015	15	Appearance by Attorney Maria L. Rockwell, Esq. for Brenda L MacGrath	
07/28/2015	16	Withdrawal Applies To: Gentile, Esq., Peter J (Attorney) on behalf of MacGrath, Brenda L (Petitioner)	
10/22/2015	17	Inventory Filed	
11/25/2015	18	Motion for Temporary Orders	
11/30/2015	19	Affidavit of Brenda MacGrath	
12/07/2015	20	Motion for Orders Relating to the Sale of Property	
02/11/2016	21	Motion for Orders Relating to the Sale of Property Denied 02/09/2016 File Reference # 20 without prejudice (see order)	Roach
02/11/2016	22	Order (on Personal Representative's Motion for Orders Relating to the Sale of Property) dated 02/09/2016	Roach
02/11/2016	23	Partial Temporary Order dated 02/09/2016	Roach



**MASSACHUSETTS
WORCESTER PROBATE AND FAMILY COURT
Docket Report**

02/24/2016	24	Motion for Further Temporary Orders filed by Susan Ciani's	
02/29/2016	28	Opposition Of Brenda MacGrath to Susan Ciani's Motion for Further T.O.	
		Attorney: Rockwell, Esq., Maria L.	
04/28/2016	25	Further Temporary Order (on Objector's Motion for Further Temporary Orders filed 02/24/2016) dated 04/27/2016	Roach
06/09/2016	26	Petition for Sale of Real Estate	
06/09/2016	27	Affidavit as to Military Service	
06/22/2016	29	Appearance by Attorney Katherine A. Bagdis, Esq. for Susan Ciani	
		Attorney: Bagdis, Esq., Katherine A.	
07/18/2016	30	Motion: To Dismiss	
07/29/2016	39	Susan Ciani's Objection Memorandum in Support of Motion to Dismiss	
08/02/2016	31	Petition for Order to Render Inventory/Account	
08/02/2016	32	Order to Render Issued returnable 09/06/2016	Keamy
08/05/2016	33	Opposition to Motion to Dismiss	
08/05/2016	34	Affidavit: Other of Maria L. Rockwell	
08/05/2016	35	Affidavit: Other of Carrie A. Fleming	
08/05/2016	36	Affidavit: Other of Kathryn Szewczyk	
08/09/2016	37	Motion To Dismiss DENIED on 08/08/2016 File Reference # 30	Roach
08/09/2016	38	Order dated August 8, 2016	Roach
08/10/2016	40	Decree Dated 8-8-2016 on Sale of Real Estate *See Motion to Amend Decree of Sale of Real Estate Allowed 11-2-2016*	Roach
10/11/2016	41	Brenda L. MacGrath First Account from 6-3-2015 thru 6-30-2016	
11/02/2016	42	Motion For Appointment Brenda MacGrath Decree of Sale of Real Estate	
11/02/2016	43	Motion To Amend Decree of Sale of Real Estate ALLOWED on 11/02/2016 File Reference # 42	Meagher
11/03/2016	44	Motion To Vacate Motion To Vacate Order Dated August 2,2016	
05/19/2017	45	Motion To Distribute Proceeds from Escrow for	
05/22/2017	46	Susan Ciani's Assent to Personal Representative's Motion to Distribute Proceeds from Escrow Dated 5-15-2017	
05/22/2017	47	Motion To Assent to Personal Representative's Motion to Distribute Proceeds from Escrow Dated 5-15-2017 ALLOWED on 05/22/2017 File Reference # 46	Rainaud
05/22/2017	48	Order Dated 5-22-2017 on Motion to Distribute Proceeds from Escrow	Rainaud
05/22/2017	49	Motion To Distribute Proceeds from Escrow ALLOWED on 05/22/2017 File Reference # 45	Rainaud



**MASSACHUSETTS
WORCESTER PROBATE AND FAMILY COURT
Docket Report**

06/14/2017	50	Petition for Order to Render Inventory/Account	
06/26/2017	51	Order to Render Dated 6-26-2017 Returnable 9-5-2017 *Vacated on August 3, 2017*	Rainaud
07/17/2017	52	Motion To Vacate Order to Render	
08/09/2017		Citation issued on Petition to render an account.	
08/09/2017	53	Order Dated 8-3-2017 on Motion to Vacate Order to Render	Rainaud
09/01/2017	54	Appearance and Objection of Maria L. Rockwell for Brenda MacGrath	

THE COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

WORCESTER DIVISION

DOCKET NOS. WO16E0019
WO16E0020
WO16E0021
Linked case WO15P1760

SUSAN CIANI,

Petitioner

v.

BRENDA MACGRATH
CLAY H. CIANI
JOHN J. CIANI and
WILLIAM R. CIANI,

Respondents.

MEMORANDUM OF DECISION AND ORDER

On Brenda MacGrath's Motion for Partial Summary Judgment
(filed on or about January 27, 2017) and,
Susan Ciani's Cross-Motion for Summary Judgment
(filed January 27, 2017).

On October 30, 2017, this matter came before the Court, Justice Sandman presiding, for hearing on Brenda MacGrath's ("Personal Representative") Motion for Partial Summary Judgment and Susan Ciani's ("Susan") Cross-Motion for Summary Judgment. Personal Representative appeared and was represented by Attorney Maria L. Remillard (f/k/a Maria L. Rockwell). Susan appeared and was represented by Attorney Katherine Bagdis. The Court heard argument from attorneys for both parties.

As alternative relief to her request for summary judgment, the Personal Representative requested that the Court Reserve and Report the matter to the Appeals Court. At the hearing on October 30, 2017, both parties expressed a willingness to have the case reported. On or about December 15, 2017, the Court issued an Order directing the parties to submit a Statement of Agreed Facts and a Joint Request for Rulings of Law, so that the matter could be reported to the Appeals Court consistent with the parties' wishes. On January 31, 2018, the parties came before

the Court and indicated that they were unable to reach an agreement on the documents called for in the December 15, 2017 Order. The Court granted the parties until February 2, 2018 to each file their own Statement of Uncontested Facts and Statement of Issues of Law. Each party submitted a Statement of Issues of Law and a Statement of Uncontested Facts on February 2, 2018. Both parties also requested that the three equity cases be consolidated for purposes of appeal. In addition to the contents of all three equity files, the Court takes judicial notice of the contents of the probate case related to this matter: In re: Raymond J. Ciani, WO15P1760.

After consideration of the arguments, pleadings and admissible portions of documents submitted in support thereof, the Court enters the following:

Relevant Procedural History and Background

The three equity matters that are before the Court stem from the death of Raymond Ciani and, the subsequent dispute between his surviving children and his Wife, Susan Ciani (hereinafter "Susan") regarding how his property should be divided amongst them.¹ While the probate action is not before the Court, the filings in that matter are interrelated to the equity petitions and therefore, the Court has included some of them in the Relevant Procedural History.

On June 3, 2015, Brenda MacGrath (hereinafter "Brenda" or, the "Personal Representative") filed a Petition for Informal Probate of the Estate of Raymond Ciani (Docket # WO15P1760EA). Brenda's Petition requested that she be appointed as the Personal Representative of Raymond's Estate. Decedent's surviving children and Susan each assented to the allowance of the June 2, 2000 Will of Raymond Ciani ("Raymond's Will") and Brenda's appointment as Personal Representative. Brenda was appointed to serve as Personal Representative and her bond was approved on June 3, 2015.

On July 3, 2015, Susan filed a Waiver of Will with the Court pursuant to G. L. c. 191, § 15, waiving the provisions of Raymond's Will and claiming her spousal share of Raymond's Estate under the terms of G. L. c. 191, § 15.

On March 2, 2016, Susan filed three separate Petitions to Partition to force the sale of the following properties:

- a. Lot 25.1 Lincoln Point, Charlton, Massachusetts (WO16E0019);
- b. 29 Lincoln Point Road, Charlton, Massachusetts (WO16E0020); and,
- c. Lot 25.6 Lincoln Point, Charlton, Massachusetts (WO16E0021).

On March 7, 2016, August 8, 2016 and August 25, 2016, three hearings were held before the Court (Roach, J.). Ostensibly, the first two hearings were held on the probate matter and the third was held on both the probate matter and the equity petitions. The subject matter of both the equity petitions and the probate matter were addressed at all three hearings.

On May 11, 2016, Personal Representative and the Children filed an Answer and

¹ The use of first names by the Court is done to avoid confusion because several of the parties share a surname. No disrespect is intended.

Counterclaim to Susan's Petition to Partition Lot 25.1 (WO16E0019). The Counterclaim requested that the Court dismiss Susan's Petition for Partition and sought entry of a Declaratory Judgment which provides:

1. Susan is not entitled to partition;
2. Lump-sum distribution for the sale of real estate based on a present valuation of Susan's one-third (1/3) life estate is prohibited; and,
3. After the payment of \$25,000.00 to Susan (less funds/property held wrongfully or withheld by her), Susan shall receive only the net income of the excess of her one-third (1/3) interest from the proceeds from the sale of the real estate which shall be held in trust to be administered by the Personal Representative, with only the net interest paid to Susan for her life and upon Susan's death, the Children shall receive the principal of said Trust.

At the August 8, 2016 hearing, counsel for the Personal Representative argued that the case should be reported to the Appeals Court. At the August 25, 2016 status conference, the potential for a Reservation and Report to the Appeals Court was again discussed. At that time, the Court (Roach, J.) expressed a willingness to report the case to the Appeals Court if the parties were to file a joint motion to that effect, accompanied by an agreed statement of facts.

On or about October 11, 2016, the Personal Representative filed her First Account with the Court, covering the period of June 03, 2015 through June 30, 2016. After payment of certain debts, but with no payment for the Personal Representative's services, the remaining personal property was valued at \$39,807.75 and the total estate, including real estate held, was valued at \$677,582.85.

On December 28, 2016, the possibility of a Reservation and Report to the Appeals Court was again raised before the Court (Dunn, J.). At that time, there was confusion between counsel for the parties as to whether the Reservation and Report was to take place under the equity matters or under the probate matter.

On January 27, 2017, Personal Representative filed a Motion for Partial Summary Judgment on Counterclaim for Declaratory Judgment as to all three Petitions for Partition. In addition to the relief requested in her Counterclaim, Personal Representative requested that the Court compel Susan to pay all of the expenses associated with a life tenancy in the event that she is deemed to hold a life estate in the real estate. As an alternative to her request for summary judgment, Personal Representative asked that the Court reserve and report the matter for determination by the Appeals Court and stay all proceedings pending determination of same pursuant to G. L. c. 215, § 13 and Mass. R. Civ. P. 64.

On same date, Susan filed a Cross-Motion for Summary Judgment. Susan's Cross Motion sought summary judgment in her favor as to all three Petitions to Partition. The basis of Susan's Motion for Summary Judgment is that she holds a life estate in the subject real estate, which grants her the right to petition to partition the real estate pursuant to G. L. c. 241. In addition to seeking a declaratory judgment that she is permitted to petition for partition, Susan

further requests that, in the absence of agreement regarding terms of sale, that a commissioner be appointed and that, upon the sale, Susan shall receive her 1/3 life estate from the net proceeds. "Petitioner's share shall be calculated in accordance with the actuarial tables under Section 2301 of the Internal Revenue Code as of the date of April 13, 2015 when Raymond Ciani died."

Also on or about January 27, 2017 Personal Representative filed a Memorandum in Opposition to Susan Ciani's Cross-Motion for Summary Judgment.

On February 7, 2018, the Court (Sandman, J.) consolidated the three equity complaints for purposes of reservation and report to the appeals court, pursuant to a request from the parties.

Summary Judgment Standard

"In all cases not governed by the Mass.R.Dom.Rel.P., summary judgment may be granted in accordance with the provisions of Rule 56 of the Mass.R.Civ.P." Supplemental Rule 27B of the Probate and Family Court. "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and responses to requests for admission under Rule 36, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Mass. R. Civ. P. 56 (c).2

The party moving for Summary Judgment assumes, "the burden of affirmatively demonstrating that there is no genuine issue of material fact on every relevant issue, even if he would have no burden on an issue if the case were to go to trial." Pederson v. Time, Inc., 404 Mass. 14, 17 (1989), citing Attorney Gen. v. Bailey, 386 Mass. 367 (1982) cert denied sub nom; Bailey v. Bellotti, 459 U.S. 970 (1981). A "material" fact is one that, if true, would provide a basis for the fact finder to find in favor of a party. Carey v. New England Organ Bank, 446 Mass. 270, 278 (2006). For purposes of ruling on a motion for summary judgment, the Court takes the evidence in the light most favorable to the opposing party to determine if all material facts have been established. Greater Lawrence Sanitary District v. Town of North Andover and others, 439 Mass. 16, 20-21 (2003), citing Augat Inc. v. Liberty Mutual Insurance Co., 410 Mass. 117, 120 (1991). "If the moving party establishes the absence of a triable issue, the party opposing the motion must respond and allege specific facts which would establish the existence of a genuine issue of material fact in order to defeat a motion for summary judgment." Pederson at 17, citing O'Brion, Russell & Co. v. LeMay, 370 Mass. 243, 245 (1976). "In a case like this one where both parties have moved for summary judgment, the evidence is viewed in the light most favorable to the party against whom judgment is to enter." Albahari v. Zoning Bd. Of Appeals of Brewster, 76 Mass. App. Ct. 245, 249 n.4 (2010).

2 On January 27, 2017, Personal Representative filed a Motion to Strike Affidavit of Susan Ciani dated January 6, 2017. On same date, Susan filed a Motion to Strike Pursuant to Mass. R. Civ. P. 56 and Probate Court Rule 27C with regard to both Personal Representative's Affidavit of Objections, dated June 6, 2016 and Personal Representative's Affidavit in Support of Motion for Partial Summary Judgment dated December 2, 2016. The Court has yet to rule on the Motions to Strike. However, due to the fact that the Court's analysis of the Motion for Partial Summary Judgment and the Cross-Motion thereto is limited to the material facts on which there is no genuine dispute, it is not necessary to rule on the Motions to Strike at this time.

"If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly." Mass. R. Civ. P. 56 (d).

Material Facts for Which There is no Genuine Dispute

1. Raymond J. Ciani ("Decedent" or "Raymond") drafted a Will on June 2, 2000 ("Raymond's Will"), leaving his entire estate to his wife, Mary E. Ciani ("Mary"), or if she did not survive him, in equal shares to their four adult Children.
2. Mary predeceased Raymond.
3. On August 25, 2013, the Decedent married Susan Ciani ("Susan").
4. On April 13, 2015, Decedent died while residing at 29 Lincoln Point Road, Charlton, Massachusetts with Susan.
5. Decedent was survived by his four children: Clay H. Ciani, John J. Ciani, William R. Ciani, and Brenda MacGrath (collectively, "Decedent's Children").
6. Raymond's Will does not make provisions for Susan.
7. There has been no attempt by any person to challenge the validity of Raymond's Will.
8. Decedent owned five separately taxed parcels of real estate at his death: 1) 29 Lincoln Point Road, Charlton, Massachusetts ("29 Lincoln Point Road"), 2) 88 Ramshorn Road, Charlton, Massachusetts, 3) Lot 81-B-25.1 in Charlton, Massachusetts ("Lot 25.1"), 4) Lot 81-B-25.6 in Charlton, Massachusetts ("Lot 25.6"), and 5) Lot 81-B-26 in Charlton, Massachusetts ("Lot 26").
9. On or about October 11, 2016, the Personal Representative filed her First Account with the Court, covering the period of June 03, 2015 through June 30, 2016. After payment of certain debts, but with no payment for the Personal Representative's services, the remaining personal property was valued at \$39,807.75 and the total estate, including real estate held, was valued at \$677,582.85.
10. G. L. c. 191, § 15 applies to the facts of this matter.

11. The Personal Representative and Susan disagree as to the interpretation of G. L. c. 191, § 15, and the administration of the forced spousal share.

Other Notable Facts

There are several facts which this Court does not consider material to the resolution of the Motion for Partial Summary Judgment and the Cross-Motion thereto, but because they are not disputed, has included below so that they are available to the Appeals Court:

1. On June 9, 2016, the Personal Representative filed a Petition for the Sale of Real Estate, regarding 88 Ramshorn Road. A Decree was issued by the Court (Roach, J.) on August 8, 2016, granting the Personal Representative authority to sell the property for the sum of \$240,000.00. On November 2, 2016, the Personal Representative filed an Assented to Motion to Amend Decree of Sale of Real Estate to allow the Personal Representative to sell the property at the reduced price of \$216,000.00.
2. As of the date of this Order, 88 Ramshorn Road had been sold, and the sale proceeds were being held in escrow by Attorney Rockwell, counsel for the Personal Representative.
3. On or about May 15, 2017, Personal Representative filed a Motion to Distribute Proceeds from Escrow. The Personal Representative requested that the Court authorize Attorney Rockwell, as escrow agent, to pay the remaining balance on the mortgage on 29 Lincoln Point Road, in the approximate amount of \$55,575.40 (plus interest and fees). The Personal Representative further requested that the Court authorize Attorney Rockwell, as escrow agent, to distribute the sum of \$22,615.18 to the Personal Representative in order that the Personal Representative could pay estate expenses. The Personal Representative's Motion further stated that the parties had agreed to the sale of 29 Lincoln Point Road and Lot 25.1, and that, upon the sale of those two parcels, any funds distributed would be returned to escrow. On May 22, 2017, Susan filed an Assent to Personal Representative's Motion to Distribute Proceeds from Escrow dated May 15, 2017. The Court (Rainaud, J.) ALLOWED the Personal Representative's Motion on May 22, 2017.
4. The parties agreed to sell 29 Lincoln Point Road and Lot 25.1 for the price of \$380,000.00. As of the date of this Order, 29 Lincoln Point Road and Lot 25.1 had been sold. The parties agree that the funds that were distributed from the escrow account pursuant to the Court's May 22, 2017 Order were replaced upon the sale of 29 Lincoln Point Road and Lot 25.1.
5. Lot 25.6 remains unsold and subject to a Petition to Partition (WO16E0021).
6. Lot 26 remains unsold. It is not subject to a Petition to Partition.

Discussion

The crux of both the Motion for Partial Summary Judgment and the Cross-Motion thereto is the proper interpretation of G. L. c. 191, § 15, and the application of that statute to the facts of this case. The portions of the statute in dispute are as follows:

"[I]f the deceased left issue, [the surviving spouse] shall thereupon take one third of the personal and one third of the real property . . . if [the surviving spouse] would thus take real and personal property to an amount exceeding twenty-five thousand dollars in value, he or she shall receive, in addition to that amount, only the income during his or her life of the excess of his or her share of such estate above that amount, the personal property to be held in trust and the real property vested in him or her for life, from the death of the deceased."

"If the real and personal property of the deceased which the surviving husband or wife takes under the foregoing provisions exceeds twenty-five thousand dollars in value, and the surviving husband or wife is to take only twenty-five thousand dollars absolutely, the twenty-five thousand dollars, above given absolutely shall be paid out of that part of the personal property in which the husband or wife is interested; and if such part is insufficient the deficiency shall, upon the petition of any person interested, be paid from the sale or mortgage in fee, in the manner provided for the payment of debts or legacies, of that part of the real property in which he or she is interested. Such sale or mortgage may be made either before or after such part is set off from the other real property of the deceased for the life of the husband or widow."

Under the plain meaning of the statute there are essentially two broad questions of fact that are truly "material" to this dispute: whether or not Susan qualifies as a "surviving spouse" under the terms of G. L. c. 191, § 15 and whether or not the Estate of Raymond Ciani is substantial enough to trigger the relevant provisions of G. L. c. 191, § 15.

There is no genuine dispute as to any of the facts that lead to the application of G. L. c. 191, § 15 to the instant matter. Raymond Ciani died testate. Raymond's spouse, Susan, survived him and is not provided for in his uncontested Will. Susan timely filed a writing, signed by her, waiving the provisions of Raymond's Will and claiming her spousal share. At the time of his death, the value of Raymond's Estate vastly exceeded twenty-five thousand dollars (\$25,000.00) and included both real property and personal property.

However, the question remains as to how to practically apply G. L. c. 191, § 15 to the facts of this case. Both parties have acknowledged that the primary issue in this matter is essentially one of statutory interpretation. Counsel for the Personal Representative has further argued that once the Court rules on how the statute should be interpreted, the remaining contested issues in this matter will "fall in line." Counsel for Susan did not dispute this assertion. This question is one of first impression. This Court has been unable to find guidance in prior case law on this subject. As such, while there is no genuine dispute of material facts in this matter, the Court is unable to find that either party is entitled to judgment as a matter of law. Consequently, Summary Judgment must be denied.

Conclusion

The Court finds that this matter is not appropriate for Summary Judgment in favor of either party. The Petitions for Partition present issues of first impression for which there is no law upon which the Court can base its decision. Consequently, while the Court finds that there is no genuine dispute as to any material fact, neither party can be deemed entitled to judgment as a matter of law. In light of the foregoing, the Court is denying both the Motion for Summary

Judgment and the Cross-Motion thereto, and will Reserve and Report the following questions of law to the Appeals Court for resolution pursuant to G. L. c. 215, § 13, Mass. R. of Civ. P. 64, and the request of the parties:


1. Whether a Surviving Spouse has standing to bring an action for petition for partition of real estate, when her sole interest in the subject property originates from G. L. c. 191, § 15?
2. What benefits and/or obligations does the phrase "vested in him or her for life" as contained in G. L. c. 191, § 15, convey to the Surviving Spouse? Specifically, is a one-third life estate in the real estate created in favor of the Surviving Spouse; and, does the Surviving Spouse have a duty to contribute to the expenses of real estate during her lifetime?
3. Upon the sale of real estate of which the Surviving Spouse holds an interest pursuant to G. L. c. 191, § 15, what portion of the proceeds, if any, should be distributed to her free from trust?

ORDER

After hearing and consideration, it is hereby ORDERED and adjudged that:

1. Brenda MacGrath's Motion for Partial Summary Judgment (filed on or about January 27, 2017) is DENIED, *without prejudice*.
2. Susan Ciani's Cross-Motion for Summary Judgment (filed January 30, 2017) is DENIED, *without prejudice*.
3. This Court shall Reserve and Report the questions of law that have been raised by the Motion for Partial Summary Judgment and the Cross-Motion thereto to the Appeals Court.
4. All further proceedings in this matter shall be stayed, except those that are necessary to preserve the rights of the parties, until the Appeals Court has taken action on the Reservation and Report.

Dated: March 20, 2018


Hon. Kathleen Sandman, Justice
Worcester Probate & Family Court

THE COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

WORCESTER DIVISION

DOCKET NOs. WO16E0019
WO16E0020
WO16E0021
Linked Case WO15P1760

SUSAN CIANI,

Petitioner

v.

BRENDA MACGRATH
CLAY H. CIANI
JOHN J. CIANI and
WILLIAM R. CIANI,

Respondents.

RESERVATION AND REPORT OF CASE

This Reservation and Report is hereby made pursuant to G. L. c. 215, § 13 and,
Rule 64 of the Massachusetts Rules of Civil Procedure.

Relevant Procedural History

1. On October 30, 2017, a hearing was held on Brenda MacGrath's ("Personal Representative") Motion for Partial Summary Judgment and Susan Ciani's ("Susan") Cross-Motion for Summary Judgment before the Worcester Probate and Family Court (Sandman, J.).¹ Personal Representative appeared and was represented by Attorney Maria L. Remillard (f/k/a Maria L. Rockwell). Susan appeared and was represented by Attorney Katherine Bagdis. The Court heard argument from attorneys for both parties. As alternative relief to her request for summary judgment, the Personal Representative requested that the Court Reserve and Report the matter to the Appeals Court. At the hearing on October 30, 2017, both parties expressed a willingness to have the case reported.
2. On or about December 15, 2017, the Court issued an Order directing the parties to submit a Statement of Agreed Facts and a Joint Request for Rulings of Law, so that the matter

¹ The use of first names by the Court is done to avoid confusion because several of the parties share a surname. No disrespect is intended.

could be reported to the Appeals Court consistent with the parties' wishes.

3. On January 31, 2018, the parties came before the Court and indicated that they were unable to reach an agreement on the documents called for in the December 15, 2017 Order. The Court granted the parties until February 2, 2018 to each file their own Statement of Uncontested Facts and Statement of Issues of Law. Each party submitted a Statement of Issues of Law and a Statement of Uncontested Facts on February 2, 2018. Both parties also requested that the three equity cases be consolidated for purposes of appeal.
4. On February 7, 2018, the Court (Sandman, J.) consolidated the three equity complaints for purposes of reservation and report.
5. The Memorandum of Decision and Order issued on March 20, 2018 addresses only Susan's Motion for Partial Summary Judgment, filed January 27, 2017 and the Personal Representative's Cross-Motion for Summary Judgment, filed January 30, 2017.

Statement of Facts

1. Raymond J. Ciani ("Decedent" or "Raymond") drafted a Will on June 2, 2000 ("Raymond's Will"), leaving his entire estate to his wife, Mary E. Ciani ("Mary"), or if she did not survive him, in equal shares to their four adult children.
2. Mary predeceased Raymond.
3. On August 25, 2013, the Decedent married Susan Ciani ("Susan").
4. On April 13, 2015, Decedent died while residing at 29 Lincoln Point Road, Charlton, Massachusetts with Susan.
5. Decedent was survived by his four children: Clay H. Ciani, John J. Ciani, William R. Ciani, and Brenda MacGrath (collectively, "Decedent's Children").
6. On June 3, 2015, Brenda MacGrath petitioned for the informal probate of Raymond's Will dated June 2, 2000 (docket number WO15P1760EA).
7. Decedent's Children and Susan all assented to the allowance of Raymond's Will and Brenda's appointment as Personal Representative.
8. Brenda MacGrath (hereinafter "Personal Representative") was appointed as Personal Representative of Decedent's Estate on or about June 3, 2015.
9. Raymond's Will does not make provisions for Susan.

10. There has been no attempt by any person to challenge the validity of Raymond's Will.
11. On July 3, 2015, Susan filed a Waiver of Will with the Court pursuant to G. L. c. 191, § 15, waiving the provisions of Raymond's Will and claiming her spousal share of Raymond's Estate under the terms of G. L. c. 191, § 15.
12. Decedent owned five separately taxed parcels of real estate at his death: 1) 29 Lincoln Point Road, Charlton, Massachusetts ("29 Lincoln Point Road"), 2) 88 Ramshorn Road, Charlton, Massachusetts, 3) Lot 81-B-25.1 in Charlton, Massachusetts ("Lot 25.1"), 4) Lot 81-B-25.6 in Charlton, Massachusetts ("Lot 25.6"), and 5) Lot 81-B-26 in Charlton, Massachusetts ("Lot 26").
13. On or about March 2, 2016, Susan filed three separate Petitions to Partition to force the sale of three of Decedent's parcels of real estate: Lot 25.1 (WO16E0019), 29 Lincoln Point Road (WO16E0020) and Lot 25.6 (WO16E0021).
14. On June 9, 2016, the Personal Representative filed a Petition for the Sale of Real Estate, regarding 88 Ramshorn Road. A Decree was issued by the Court (Roach, J.) on August 8, 2016, granting the Personal Representative authority to sell the property for the sum of \$240,000.00. On November 2, 2016, the Personal Representative filed an Assented to Motion to Amend Decree of Sale of Real Estate to allow the Personal Representative to sell the property at the reduced price of \$216,000.00.
15. As of the date of this Reservation and Report, 88 Ramshorn Road had been sold pursuant to a license to sell obtained by the Personal Representative, and the sale proceeds are being held in escrow by Attorney Rockwell, counsel for the Personal Representative.
16. On or about October 11, 2016, the Personal Representative filed her First Account with the Court, covering the period of June 03, 2015 through June 30, 2016. After payment of certain debts, but with no payment for the Personal Representative's services, the remaining personal property was valued at \$39,807.75 and the total estate, including real estate held, was valued at \$677,582.85.
17. On or about May 15, 2017, Personal Representative filed a Motion to Distribute Proceeds from Escrow. The Personal Representative requested that the Court authorize Attorney Rockwell, as escrow agent, to pay the remaining balance on the mortgage on 29 Lincoln Point Road, in the approximate amount of \$55,575.40 (plus interest and fees). The Personal Representative further requested that the Court authorize Attorney Rockwell, as escrow agent, to distribute the sum of \$22,615.18 to the Personal Representative in order that the Personal Representative could pay estate expenses. The Personal Representative's Motion further stated that the parties had agreed to the sale of 29 Lincoln Point Road and Lot 25.1, and that, upon the sale of those two parcels, any funds distributed would be returned to escrow. On May 22, 2017, Susan filed an Assent to Personal Representative's Motion to Distribute Proceeds from Escrow dated May 15,

2017. The Court (Rainaud, J.) ALLOWED the Personal Representative's Motion on May 22, 2017.

18. The parties agreed to sell 29 Lincoln Point Road and Lot 25.1 for the price of \$380,000.00. As of the date of this Reservation and Report, these properties had been sold and funds that had previously been distributed from the escrow account pursuant to the Court's May 22, 2017 Order had been replaced using sale proceeds.
19. Lot 25.6 remains unsold and subject to a Petition to Partition (WO16E0021).
20. Lot 26 remains unsold. It is not subject to a Petition to Partition.
21. G. L. c. 191, § 15 applies to the facts of this matter.
22. The Personal Representative and Susan disagree as to the interpretation of G. L. c. 191, § 15, and the administration of the forced spousal share.

ISSUES PRESENTED

There are essentially three distinct, but interrelated, issues raised by Personal Representative's Motion for Partial Summary Judgment and Susan's Cross-Motion thereto:

1. Whether a Surviving Spouse has standing to bring an action for petition for partition of real estate, when her sole interest in the subject property originates from G. L. c. 191, § 15?
2. What benefits and/or obligations does the phrase "vested in him or her for life" as contained in G. L. c. 191, § 15, convey to the Surviving Spouse? Specifically, is a one-third life estate in the real estate created in favor of the Surviving Spouse; and, does the Surviving Spouse have a duty to contribute to the expenses of real estate during her lifetime?
3. Upon the sale of real estate of which the Surviving Spouse holds an interest pursuant to G. L. c. 191, § 15, what portion of the proceeds, if any, should be distributed to her free from trust?

G. L. c. 215, § 13, authorizes a judge of the Probate and Family Court to report a matter to the Appeals Court under only two circumstances: (1) where a case is "heard for final determination" the trial judge "may reserve and report the evidence and all questions of law therein for consideration of the appeals court" or (2) "upon making an interlocutory judgment, decree or order, [the trial judge] is of the opinion that it so affects the merits of the controversy that the matter ought, before further proceedings, to be determined by the appeals court, [the trial judge] may report the question for that purpose, and stay all further proceedings except such as

are necessary to preserve the rights of the parties." G. L. c. 215, § 13; see also, Smith v. Brown, 430 Mass. 1005 (1999).

The denial of the Motion for Partial Summary Judgment and the Cross-Motion thereto will so effect the merits of the Consolidated Equity Complaints that the aforementioned questions of law ought to be resolved by the Appeals Court before further proceedings are held in the trial court. Attorneys for both parties have acknowledged, and the Court concurs, that answers to the three legal questions cited above will dictate the outcome of this matter.

Dated: March 20, 2018

A handwritten signature in black ink, consisting of a stylized 'K' followed by a large, sweeping loop that extends to the right and then curves back down to the baseline.

Hon. Kathleen Sandman, Justice
Worcester Probate & Family Court